

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS**

OMB CONTROL NUMBER 3038-0089

Swap Data Recordkeeping and Reporting Requirements:
Pre-Enactment and Transition Swaps

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Section 2(a)(13)(G) of the Commodity Exchange Act (“CEA”) requires that all swaps must be reported to SDRs. CEA section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting, which are to apply to both registered entities and counterparties involved with swaps. CEA section 2(h)(5)(B) provides for the reporting of data relating to both: (i) swaps entered into before the date of enactment of the Dodd-Frank Act, the terms of which have not expired as of the date of enactment of that Act (“pre-enactment swaps”) and (ii) swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the compliance date specified in Commission swap data reporting rules implementing Section 2(h)(5)(B) (“transition swaps”) (together, “historic swaps”).

The Commission established these regulations in Part 46 of the Commission’s regulations. The regulations establish swap reporting and recordkeeping requirements for reporting counterparties to pre-enactment swaps and transition swaps.

The Commission is adopting amendments to Part 45 to streamline reporting requirements and clarify and update certain provisions. Since Part 46 relies on many of the requirements set out in Part 45, the changes to Part 45 necessitate changes for reporting counterparties with respect to the regulatory requirement in part 46 (i.e., specifically § 46.11 providing the option for reporting changes to historical swaps using the state data method of reporting). The Commission is amending Information Collection 3038-0089 to account for this amendment.

Current § 46.11 provides that for pre-enactment or transition swaps for which part 46 requires reporting of continuation data, reporting counterparties reporting state data as provided in part 45 may fulfill the requirement to report errors or omissions by making appropriate corrections in their next daily report of state data pursuant to part 45. Since the Commission is removing this requirement from § 45.4, the Commission is also removing the option for state data reporting from § 46.11.

- 2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The Commission's regulations in Part 46 require reporting counterparties to report data for pre-enactment swap and transition swaps to SDRs. The SDRs provide this data to the Commission directly. The Commission uses this data in connection with fulfilling its regulatory duties.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

All of the information collections within Information Collection 3038-0089 involve the use of electronic collection protocols. All required data submissions to the Commission must be electronic.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The information collected pursuant to part 46 of the Commission's regulations is not already collected by the Commission or other regulators for any other purpose and is not publicly available through another source. The data is unique and no other similar transaction-level information is available. There are no other existing regulations that could be modified to serve a similar purpose in any practical way.

- 5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-I), describe the methods used to minimize burden.**

The Commission has previously established that DCMs, DCOs, MSPs, SDs, SDRs, and SEFs are not small entities. In addition, based on its review of publicly available data, the Commission believes that the overwhelming majority of non-SD/MSP/DCO reporting counterparties affected by this rulemaking are eligible contract participants ("ECPs") that the Commission has previously determined are not small entities or do not otherwise meet the definition of "small entity." Accordingly, the Commission does not believe that this collection of information will affect a substantial number of small entities or small businesses.

- 6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.**

Without the required frequency of reporting set forth in the Commission's regulations, the Commission would be unable to fulfill its regulatory mandate of monitoring systemic risk.

- 7. Explain any special circumstances that require the collection to be conducted in a manner:**

- requiring respondents to report information to the agency more often than quarterly;**

Swap data is not required to be reported to the Commission.

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:**

This does not apply.

- **requiring respondents to submit more than an original and two copies of any document;**

Not applicable, respondents are not required to submit more than an original and two copies of any document.

- **requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**

The amendments to Part 46 will not modify Information Collection 3038-0089 in regards to recordkeeping requirements. Other Commission regulations, including §§ 1.31, 45.2, and 49.12, would require records, including much of the information provided under Information Collection 3038-0096, to be kept for at least five years. Those recordkeeping requirements are discussed in the information collections for those other regulations.

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

Not applicable, the collection is not connected or related to any statistical survey.

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

Not applicable, the collection does not involve the use of any statistical data classification.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

Not applicable, the collection does not include any pledges of confidentiality that are not supported by authority established in statute or regulation.

- **The collection does not involve any pledge of confidentiality, requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

All requirements in the collection to submit proprietary or other confidential information are subject to the Commission's existing statutory, regulatory, and procedural requirements to protect the confidentiality of such information. This includes the requirements of sections 8(a) and 21(c)(6) of the Act as well as in §§ 43.4, 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's regulations.

- 8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

As part of the rulemaking process, the proposed amendments were published in the Federal Register at 85 FR 21578 (Apr. 17, 2020). The Commission did not receive any comments on the information collection.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

Not applicable, no payment or gift will be provided to respondents.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.**

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. All requirements in the collection to submit proprietary or other confidential information are subject to the Commission's existing statutory, regulatory, and procedural requirements to protect the confidentiality of such information. This includes the requirements of sections 8(a) and 21(c)(6) of the Act as well as in §§ 43.4, 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's regulations.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

Not applicable, the collection does not involve any questions of a sensitive nature, as the term is used in this question.

- 12. Provide estimates of the hour burden of the collection of information. The Statement should:**

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to**

base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

Please see Attachment A for the estimated hour burden for the collections of information discussed in this supporting statement.

As noted above, to conform to the changes to § 45.4, the Commission is removing the option for state data reporting from § 46.11. The Commission believes that this will reduce the number of continuation data reports reporting counterparties send SDRs for historical swaps by 50%. As shown on Attachment A, the Commission now estimates that to comply with amended § 46.11, the 625¹ SD, MSP, and non-SD/MSP reporting counterparties that the Commission estimates are reporting historical swaps will each spend 50% less time reporting their historical swaps under part 46, for a total annual reporting burden of 945 hours.²

In the last renewal for collection 3038-0089, the Commission estimated the total recordkeeping burden to be 78.225 hours per respondent, at a cost of \$5,670 per entity, with an aggregate annual burden of 15,753 hours at an aggregate cost of \$1,156,875. The Commission is not updating the recordkeeping requirements in part 46.

As a result of the proposed changes to the reporting burden, the Commission's estimated recordkeeping and reporting total would be the estimated 945 hours for reporting added to the

¹ The preamble accompanying the proposal erroneously stated that there were 500 SD, MSP, and non-SD/MSP respondents. This misstated the number of respondents by failing to separate the 125 SD/MSP respondents from the 500 non-SD/MSP respondents. The correct estimate of 625 SD, MSP, and non-SD/MSP reporting counterparties is used in Attachment A, and was updated in the preamble accompanying the final rule.

² In the preamble accompanying the proposal, the Commission estimated that to comply with proposed amended § 46.11, 500 SD, MSP, and non-SD/MSP reporting counterparties that the Commission estimated are reporting historical swaps would each submit 200 reports under part 46 with an average burden of .01 hours per report, for a burden of 2 hours per respondent or 1,000 burden hours in the aggregate. The correct aggregate burden hours estimate, which was reflected in the supporting statement filed with OMB in connection with the proposal, is 945 (consisting of 625 aggregate annual burden hours for the 125 SD/MSP reporting counterparties and 320 aggregate burden hours for the 500 non-SD/MSP reporting counterparties). The Commission is also revising the estimated number of reports filed per respondent under part 46 from 200 reports to 151. These numbers were updated in the preamble accompanying the final rule and are shown in Attachment A to this supporting statement.

current 15,753 hours for recordkeeping that the Commission is not changing. The result is a total estimated recordkeeping and report burden of 16,698 hours for 30,125 total annual responses.

In calculating this cost estimate, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor's Bureau of Labor Statistics ("BLS"). Commission staff arrived at an hourly rate of \$72.23 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2018) multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): "computer programmer – industry: securities, commodity contracts, and other financial investment and related activities" (50% weight); "compliance officer – industry: securities, commodity contracts, and other financial investment and related activities" (25%); and "lawyer – legal services" (25%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The Commission does not believe this amendment to part 46 will require any system updates by SDRs or reporting counterparties.

- 14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The Commission does not anticipate that the changes will require additional staff time or technology resources beyond what is already dedicated to this collection, as discussed in previous filings related to Information Collection 3038-0089.

- 15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

As discussed above, the Commission is amending Part 46 of the Commission's regulations in order to improve the quality of swap data and to streamline regulatory requirements governing data reporting. This supporting statement discusses adjustments to burden hours calculations for Information Collection 3038-0089 to account for modified burdens associated with the changes to the regulation. The Commission is not updating the overall burden hours, collection volumes, and costs related to Information Collection 3038-0089.

- 16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

Not applicable, the results of this collection of information are not planned to be published for statistical use.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

Not applicable, the Commission is not seeking such approval for this publication.

- 18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

Not applicable, there are no exceptions.

Attachment A

Reporting Burden

Entity	Annual burden hours (per entity)	Annual cost (per entity)	Aggregate annual burden hours (all entities)	Aggregate annual cost (all entities)
125 SDs/MSPs ³	5 ⁴	\$361 ⁵	625	\$45,144
500 Non-SDs/MSPs ⁶	0.64 ⁷	\$46 ⁸	320	\$23,114
Total for Reporting ⁹	5.64	\$407	945	\$68,257

³ In the last renewal for collection 3038-0089, the Commission estimated that 125 SD/MSP respondents spend 10 hours on historical reports under part 46, at an annual cost of \$737 per entity, for a total of 1,250 burden hours for all entities at a total cost of \$92,125. The Commission is updating this estimate based on the changes to part 46.

⁴ The Commission had previously estimated that the 125 SD/MSP respondents spend 10 hours per entity for historical swap reporting. As discussed above, the Commission estimates that the changes to part 46 will reduce the number of reports each SD/MSP respondent sends to SDRs by 50%, and thereby reduce the amount of time spent on reporting by 5 hours per SD/MSP entity. The Commission is updating the rest of the estimate accordingly.

⁵ The Commission had previously estimated the cost based on an average wage rate of \$72.48. The Commission is updating the wage rate to \$72.23.

⁶ In the last renewal for collection 3038-0089, the Commission estimated that 500 non-SD/MSP respondents spend 1.275 hours on historical reports under part 46, at an annual cost of \$94 per entity, for a total of 325 burden hours for all entities at a total cost of \$47,000. The 325 burden hour estimate should have been 638 burden hours rather than 325 (500 respondents x 1.275 hours). The Commission is correcting and then updating this estimate based on the changes to part 46.

⁷ The Commission had previously estimated that the 500 non-SD/MSP respondents spend 1.275 hours per entity for historical swap reporting. As discussed above, the Commission estimates that the changes to part 46 will reduce the number of reports each non-SD/MSP respondent sends by SDRs by 50%, thereby reducing the amount of time spent on reporting by non-SD/MSP reporting counterparties by 50% to .64 hours per entity. The Commission is updating the rest of the estimate accordingly.

⁸ The Commission had previously estimated the cost based on an average wage rate of \$72.48. The Commission is updating the wage rate to \$72.23.

⁹ In the preamble accompanying the proposal, the Commission estimated that to comply with proposed amended § 46.11, 500 SD, MSP, and non-SD/MSP reporting counterparties that the Commission estimated are reporting historical swaps would each submit 200 reports under part 46 with an average burden of .01 hours per report, for a burden of 2 hours per respondent or 1,000 burden hours in the aggregate. The correct aggregate burden hours estimate, which was reflected in the supporting statement filed with OMB in connection with the proposal, is 945. The Commission is also revising the estimated number of reports filed per respondent under part 46 from 200 reports to 151. These numbers are reflected in the estimates in the above table.

Recordkeeping

Entity	Annual burden hours (per entity)	Annual cost (per entity)	Aggregate annual burden hours (all entities)	Aggregate annual cost (all entities)
125 SD/MSPs	78.025	\$5,655	9,753	\$706,875
30,000 Non-SD/MSPs	0.2	\$15	6,000	\$450,000
Total for Recordkeeping	78.225	\$5,670	15,753	\$1,156,875

Total for Reporting and Recordkeeping	83.865	\$6,077	16,698	\$1,225,132
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